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January 17, 2014

Hon. Pamela K. Chen
Judge United States District Court
225 Cadman Plaza East Courtrooms: 4F
Brooklyn New York 11201
Telephone: (718) 613-2510 Fax: (718) 613-2516

Re: Gorfinkel v. Vayntrub et al Case# 12:13-CV-03093-(PKC) (AKT)

**Request for Oral Argument of Defendants' Rule 12(b) (6) Motion to Dismiss
Pursuant to Judge Chen's Rule**

Dear Judge Chen:

I am counsel to Vera Gorfinkel in this case under Case# 12:13-CV-03093-(PKC) (AKT)

Background

Docket entries #23, 24, 25, 26 and 27 indicate Plaintiff Gorfinkel provided four declarations plus a Memorandum of Law in Opposition to the defendants' Rule 12(b) (6) motion to dismiss.

Once Defendants' filed its Reply on November 13, 2013 (Docket Entry #36) Plaintiff's counsel sought to comply fully with Your Honor's Docket Entry #28 by making a Request for a Status Conference and Submission of Documents by plaintiff Gorfinkel permitted by Docket Entry # 28

"... Should the Court receive the Documents pursuant to the third party subpoena, it will consider whether they should be electronically docketed and, if so, whether they should be made available only to the parties"(Docket Entry.#39, Motion 1/06/14)

Discussion:

It is respectfully submitted, this case meets the standards for oral argument, in that:

- (a) Defenses asserted are not frivolous;
- (b) Certain Issues presented herein have not been recently and authoritatively decided, as follows:

The dispositive issues raised to sustain a complaint for declaratory judgment (4th Cause of Action) concern, *inter alia* (i) the Standing of a Licensee to independently assert in an Amended Complaint of 4/02/12 (Doc.#20) a new claim for Patent Infringement (2nd Claim for Relief) where (ii) previously the Patent Holder determined in writing on 12/09/11 adversely to Genometrica's 12/05/11 written Infringement Complaint and Memorandum of Law rejecting formally on 12/09/11 under its License Agreement any and all claims that its 12 patents had been infringed upon under Section 7.1. and 7.2 of its License Agreement with Licensee Genometrica; (iii) absence of a Federal Question or Case or Controversy of Patent Infringement by patent holder SUNY(RF) or Licensee, therefore (iv) Genometrica's Standing to assert a 2nd Federal Claim for Patent Infringement on 4/02/12 is ripe for Declaratory Judgment; and

Hon. Pamela K. Chen
Judge United States District Court

January 17, 2014
Page Two

(c) as described in this Letter Application, the decisional process would be significantly aided by oral argument once the documents were provided to Judge Chen. ” (Docket Entry. #39, Motion 1/06/14)

Having provided the documents to the Court” (Docket Entry. #39, Motion 1/06/14) authorized by the Court by Docket Entry # 28, it is respectfully submitted that the decisional process would be significantly aided by oral argument with both counsel weighing-in and assessing the materiality and relevance of the third party subpoenaed documents as related to this Rule 12(b)(6) motion. submitted to the Court on January 6, 2014.

Argument

Oral argument is appropriate to give the parties the opportunity to address any factual or legal concerns the Court the Court may have.

Vera Gorfinkel respectfully submits that the procedural posture of the case presents an appropriate opportunity for respective counsel to present oral argument concerning the subject matter.

Conclusion:

The critical documents for review by the Court (See Exhibits "27 -13", "27-14" also as Exhibits "H" and "I")” (Exhibit "27-17 also Exhibit "H") (Docket Entry. #39, Motion 1/06/14) Are now before the Court as part of Docket Entry #28.

Vera Gorfinkel submits that Peter I. Bernstein, partner of Scully, Scott, Murphy & Presser⁴⁰⁰ Garden City Plaza, Garden City, New York 11530 outside counsel for the Foundation. . (See Exhibits "27 -13", "27-14" also as Exhibits "H" and "I")” (Docket Entry. #39, Motion 1/06/14) on 12/09/11, evaluated the Patent Infringement Evidence adversely to Licensee. Based upon that Bernstein Report, Ms. Daneau in turn informed Genometrica and its counsel Tuffariello and Klein on 12/09/11 that the Foundation had made a formal ruling of non- infringement of any of the Foundation patents. (See Exhibits "27 -17", also part of Exhibits "H" and "I")(Exhibit "27-17 also Exhibit "H") is a writing provided to Genometrica and its counsel of Foundation's formal determination of non-Patent Infringement on 12/09/11 based upon the written complaint of Genometrica concluding,. (See Exhibit "27-17 also Exhibit

Oral Argument would permit the court to have both counsel before it, for as noted above to address any factual or legal concerns the Court may have.

Respectfully submitted,

/s/Arthur Morrison

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DECLARATION OF SERVICE.

State of New York

)ss:

County of Westchester

Arthur Morrison, attorney at law, declares the following to be true under the penalty perjury:

1. He is over the age of 21 years.
2. On January 17, 2014 by first class mail, with prepaid postage, he served a copy of the **Letter Application for Oral Argument** upon the attorneys for the defendants

See Annexed Service List

Dated: Hawthorne, New York
January 17 2014

Arthur Morrison(AM5678)
Attorney for Plaintiff

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